



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/785,204	02/20/2001	Mari Saito	203391US6	3961

22850 7590 06/20/2008  
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.  
1940 DUKE STREET  
ALEXANDRIA, VA 22314

EXAMINER
----------

ABEL JALIL, NEVEEN

ART UNIT	PAPER NUMBER
----------	--------------

2165

NOTIFICATION DATE	DELIVERY MODE
-------------------	---------------

06/20/2008

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com  
oblonpat@oblon.com  
jgardner@oblon.com

UNITED STATES PATENT AND TRADEMARK OFFICE

---

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

---

*Ex parte* MARI SAITO, NORIYUKI YAMAMOTO,  
HIROYUKI HOURIN, and KAZUNORI OHMURA

---

Appeal 2008-1232  
Application 09/785,204  
Technology Center 2100

---

Decided:<sup>1</sup> June 18, 2008

---

Before JOSEPH L. DIXON, LANCE LEONARD BARRY,  
CAROLYN D. THOMAS, *Administrative Patent Judges*.

BARRY, *Administrative Patent Judge*.

DECISION ON APPEAL

---

<sup>1</sup> An oral hearing was scheduled for April 8, 2008. Neither the Appellants nor a representative thereof appeared at the hearing. Therefore, we have reviewed this appeal solely upon the Second Supplemental Appeal Brief and the Reply Brief.

## I. STATEMENT OF THE CASE

A Patent Examiner rejected claims 1-20. The Appellants appeal therefrom under 35 U.S.C. § 134(a). We have jurisdiction under 35 U.S.C. § 6(b).

### A. INVENTION

The invention at issue on appeal retrieves information associated with the contents of a received electronic mail or an edited document. (Spec. 1, 14.)

### B. ILLUSTRATIVE CLAIMS

Claims 1 and 9, which further illustrates the invention, follow.

1. An information processing apparatus displaying associated information corresponding to a present event, comprising:

acquisition means for acquiring said associated information using existing information corresponding to a past event;

event occurrence detection means for detecting the occurrence of said present event;

search means for searching said existing information having similarity to information corresponding to the present event detected by the event occurrence detection means; and

display control means for controlling displaying of said associated information related to the existing information retrieved by said search means.

9. An information processing apparatus for displaying a character on a display device and for displaying associated information related to a text file processed by a predetermined application program, comprising:

processing detection means for detecting, as an event, predetermined processing of said predetermined application program;

key word detection means for detecting a key word from said text file processed by said predetermined application program corresponding to said event detected by said processing detection means;

search means for searching a database for said associated information by searching a data base for a previous processed existing file corresponding to said key word detected by said keyword detection means;

input means for inputting a command;

command processing means for executing, in response to said command inputted by said input means, processing on said associated information retrieved by said search means; and

display control means for displaying, in response to said event detected by said processing detection means, said character onto said display device and changing a manner of displaying said character in response to said command inputted by said input means.

### C. REJECTIONS

Claims 1-4, 9-11, 14-17, and 19 stand rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Patent No. 6,094,681 ("Shaffer").

Claims 5-8, 12, 13, and 20 stand rejected under 35 U.S.C. § 103(a) as obvious over Shaffer and U.S. Patent No. 6,434,745 ("Conley").

Claim 18 stands rejected under § 103(a) as obvious over Shaffer and U.S. Patent Application No. 2002/0038308 ("Cappi").

## II. CLAIMS 1-6 AND 17-20

Before addressing the Examiner's rejections, we make our own rejection.

### A. BOARD'S REJECTION

"The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention." 35 U.S.C. § 112, ¶ 2. Furthermore, a claim is indefinite "where the language 'said lever' appears in a dependent claim where no such 'lever' has been previously recited . . . ." *Ex parte Moelands*, 3 USPQ2d 1474, 1476 (BPAI 1987).

Here, claim 1 recites in pertinent part the following limitations: "said existing information *having similarity to information corresponding to the present event detected by the event occurrence detection means . . .*" (Emphasis added.) No "existing information *having similarity to information corresponding to the present event detected by the event occurrence detection means*" (emphasis added), however, is previously recited in the claim. The only prior recitation of "existing information" is "existing information *corresponding to a past event . . .*"<sup>2</sup> (Emphasis added.)

---

<sup>2</sup> The recitation of "existing information corresponding to a past event"

Claim 1 further recites in pertinent part the following limitations: "the existing information *retrieved by said search means*." (Emphasis added.) No "existing information *retrieved by said search means*" (emphasis added), however, is previously recited in the claim. The only prior instances of "existing information" are the aforementioned "existing information *corresponding to a past event*" (emphasis added) and the aforementioned "said existing information *having similarity to information corresponding to the present event detected by the event occurrence detection means . . .*." (Emphasis added.) Furthermore, the claim does not specify that its "search means" performs the function of retrieving; it merely specifies that the means performs the function of searching.

Furthermore, claims 17, 19, and 20 all depend from claim 1. Claims 17 and 19 both recite in pertinent part "*said existing information*." (Emphasis added.) Claim 20 recites in pertinent part "*the existing information*." (Emphasis added.) As aforementioned, claim 1 recites three different types of "existing information," viz., "existing information *corresponding to a past event*" (emphasis added), "existing information *having similarity to information corresponding to the present event detected by the event occurrence detection means*" (emphasis added), and "existing information *retrieved by said search means*." (Emphasis added.) It is unclear to which of these types of existing information, if any, "said existing information" and "the existing information" refer.

---

provides antecedent basis for "said existing information corresponding to said past event" in claim 19.

The aforementioned defects make claims 1, 17, 19, and 20 and claims 2-6 and 18, which depend therefrom, indefinite. Therefore, we reject claims 1-6 and 17-20 under 35 U.S.C. § 112, ¶ 2 as indefinite for failing to particularly point out and distinctly claim the Appellants' invention.

#### B. EXAMINER'S REJECTIONS

A rejection should not be based on "speculations and assumptions." *In re Steele*, 305 F.2d 859, 862 (CCPA 1962). "All words in a claim must be considered in judging the patentability of that claim against the prior art. If no reasonably definite meaning can be ascribed to certain terms in the claim, the subject matter does not become obvious—the claim becomes indefinite." *In re Wilson*, 424 F.2d 1382, 1385 (CCPA 1970).

Here, for the reasons explained in addressing the indefiniteness of claims 1-6 and 17-20, our analysis of these claims leaves us in a quandary as to what they specify. Speculations and assumptions would be required to decide the meaning of the terms employed therein and the scope of the claims. Therefore, we reverse *pro forma* the Examiner's rejections of these claims.

We emphasize that our reversal is based on procedure rather than on the merits of the obviousness rejections. The reversal does not mean that we consider the claims to be patentable as presently drawn.

### III. CLAIMS 9, 10, AND 14-16

When multiple claims subject to the same ground of rejection are argued as a group by appellant, the Board may select a single claim from the group of claims that are argued together to decide the appeal with respect to the group of claims as to the ground of rejection on the basis of the selected claim alone. Notwithstanding any other provision of this paragraph, the failure of appellant to separately argue claims which appellant has grouped together shall constitute a waiver of any argument that the Board must consider the patentability of any grouped claim separately.

37 C.F.R. § 41.37(c)(1)(vii) (2005).<sup>3</sup> When the patentability of dependent claims is not argued separately, the claims stand or fall with the claims from which they depend. *In re King*, 801 F.2d 1324, 1325 (Fed. Cir. 1986); *In re Sernaker*, 702 F.2d 989, 991 (Fed. Cir. 1983).

Here, claims 9, 10, and 14 are subject to the same ground of rejection. Rather than arguing the rejection of claim 10 separately, the Appellants rely on their argument for claim 9. (2d Supp. App. Br.<sup>4</sup> 12.) Furthermore, they do not argue the rejection of claim 14 at all. Therefore, we select claim 9 as the sole claim on which to decide the appeal of claims 9, 10, and 14.

---

<sup>3</sup> We cite to the version of the Code of Federal Regulations in effect at the time of the Second Supplemental Appeal Brief. The current version includes the same rules.

<sup>4</sup> We rely on and refer to the Second Supplemental Appeal Brief in lieu of the original Supplemental Appeal Brief, because the latter was defective. We have not considered the original in deciding this appeal.



The Appellants argue claims 15 and 16, which are subject to the same ground of rejection, as a group. (2d Supp. App. Br. 10-12). Therefore, we select claim 15 as the sole claim on which to decide the appeal of claims 15 and 16.

"With this representation in mind, rather than reiterate the positions of the parties in toto, we focus on the issue therebetween." *Ex parte Nikoonahad*, No. 2006-3247, 2007 WL 1591636, at \*2 (BPAI 2007). The Examiner finds that "'text file[ ]' is interpreted to read on various messages 'an email message' or a 'text attachment to message body' or 'calendar messages' as taught in Shaffer column 6 . . . ." (Ans. 18.) He further finds "that 'predetermined application program' is interpreted to be an electronic mail application or a Web application or any existing/preconfigured (predetermined) application which is taught to extract keywords (i.e. text) in column 5, lines 42-59." (*Id.* 17.) The Appellants argue that "[t]here is no disclosed relationship of any display of 'associated information related to a **text file processed by a predetermined application program**' . . . ." (Reply Br. 5.) We find that the Examiner has set forth a sufficient, initial showing. Therefore, the issue is whether the Appellants have shown error in the Examiner's finding that Shaffer discloses information related to a text file processed by an application program.

"Both anticipation under § 102 and obviousness under § 103 are two-step inquiries. The first step in both analyses is a proper construction of the claims . . . . The second step in the analyses requires a comparison of the

properly construed claim to the prior art." *Medichem, S.A. v. Rolabo, S.L.*, 353 F.3d 928, 933 (Fed.Cir. 2003) (internal citations omitted).

#### A. CLAIM CONSTRUCTION

"Generally, . . . the preamble does not limit the claims." *DeGeorge v. Bernier*, 768 F.2d 1318, 1322 n.3 (Fed. Cir. 1985). In particular, "[t]he preamble of a claim does not limit the scope of the claim when it merely states a purpose or intended use of the invention." *In re Paulsen*, 30 F.3d 1475, 1479 (Fed. Cir. 1994) (citing *DeGeorge*, 768 F.2d at 1322 n.3). "Where . . . the effect of the words [in the preamble] is at best ambiguous . . . a compelling reason must exist before the language can be given weight." *Arshal v. United States*, 621 F.2d 421, 430 (Ct. Cl. 1980) (citing *In re de Castelet*, 562 F.2d 1236, 1244 n.6 (CCPA 1977)).

Here, the function of "displaying" associated information appears only in the preamble of claims 9 and 15. It merely states a purpose or intended use of the claimed "information processing apparatus." The bodies of the respective claims neither repeat nor reference the function. Because the language in the bodies, standing alone, is clear and unambiguous there is no compelling reason to give the function weight.

"It is, of course, well settled that an invention is construed not only in the light of the claims, but also with reference to the file wrapper or prosecution history in the Patent Office." *Graham v. John Deere Co.*, 383 U.S. 1, 33, 86 S.Ct. 684, 702 (1966) (citing *Hogg v. Emerson*, 11 How. 587 (1850); *Crawford v. Heysinger*, 123 U.S. 589, 8 S.Ct. 399 (1887)).

Furthermore, "during examination proceedings, claims are given their broadest reasonable interpretation consistent with the specification." *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000).

Here, as noted by the Appellants *supra*, claims 9 and 15 recite in pertinent part the following limitations: "a text file processed by a predetermined application program . . . ." A file is merely "[a] complete, named collection of information, such as . . . a set of data used by a program, or a user-created document . . . ." *Microsoft Press Computer Dictionary* 164 (2d ed. 1993). For its part, the Appellants' *Substitute Summary of the Claimed Subject Matter* (p. 5) refers to the claimed "text file" as "a document corresponding to the detected event . . . ." Their Specification (p. 15), in turn, refers to "the document (for example, a received electronic mail) . . . ." Reading the representative claims in view of the prosecution history and the Specification, therefore, the limitations require information related to a set of data, such as an electronic mail ("e-mail") message, processed by an application program.

#### B. ANTICIPATION ANALYSIS

"[A]nticipation is a question of fact." *In re Hyatt*, 211 F.3d 1367, 1371-72 (Fed. Cir. 2000) (citing *Bischoff v. Wethered*, 76 U.S. (9 Wall.) 812, 814-15 (1869); *In re Schreiber*, 128 F.3d 1473, 1477 (Fed. Cir. 1997)). "A reference anticipates a claim if it discloses the claimed invention 'such that a skilled artisan could take its teachings in *combination with his own knowledge of the particular art and be in possession of the invention.*'" *In re*

*Graves*, 69 F.3d 1147, 1152 (Fed. Cir. 1995) (quoting *In re LeGrice*, 301 F.2d 929, 936 (CCPA 1962)).

Here, Shaffer discloses that "a system for automatically providing remote notification of a locally detected event includes a computing device 10 . . . ." (Col. 3, ll. 25-27.) "The first computer 10 includes a data filter 16 configured to parse through data received . . . to determine whether a predetermined event is included in the received data." (*Id.* ll. 48-51.) "Whether the data is in the format of a web page update directed to the browser 19, an e-mail message, or an electronic calendar message, the data filter 16 determines whether the event has occurred . . . ." (Col. 6, ll. 15-18.) As aforementioned, the Appellants exemplify the claimed "text file" as an e-mail message.

"A text generator 22 is used to generate an event notification text message which is stored in memory 15 of the computer." (Col. 3, ll. 58-60.) We find that such a message constitutes information related to the reference's e-mail message. We also find that a skilled artisan would know that a computing device such as Shaffer's runs an e-mail application program to process e-mail messages.

"As previously discussed, the transmission [in Shaffer] can include . . . a web page update directed to the browser 19 of the computer 10, a scheduling message directed to the electronic calendar 13, or a scheduling reminder message generated by the electronic calendar 13." (Col. 6, ll. 39-44.) "The operation of the event notification system described above is not

significantly affected by the format of the data received by the first computer 10." (Col. 6, ll. 13-15.) The "text generator 22 is used to generate an event notification text message which is stored in memory 15 of the computer." (Col. 3, ll. 58-60.) We have found that such a message constitutes information related to the reference's e-mail message. We also agree with the Examiner's finding that the web browser and the electronic calendar constitute application programs for processing web page updates and electronic calendar messages, respectively.

Because a skilled artisan could take Shaffer's teachings in combination with his own knowledge of the particular art and be in possession of a web browser, an electronic calendar, and an e-mail application program to process web page updates, electronic calendar messages, and e-mails messages, respectively, the Appellants have shown no error in the Examiner's finding that Shaffer discloses information related to a text file processed by an application program. Therefore, we affirm the rejection of claims 9, 15, and 16, and of claims 10 and 14, which fall with claim 9.

#### IV. CLAIM 11

The Examiner finds that "[i]n the case of Shaffer, the paging notification message taught in column 7, lines 19-37 is a display of text information related to a message received on pager device using a voice indicator (i.e. signal)." (Ans. 17.) The Appellants argue that "the col. 7, lines 19-37 teaching of a paging notification message . . . has nothing to do with the 'text information displayed by said display control means' . . . ." (2d

Supp. App. Br. 12.) Therefore, the issue is whether the Appellants have shown error in the Examiner's finding that Shaffer discloses a voice signal corresponding to displayed text.

Shaffer explains that "[t]he data filter 16 can be configured to parse through content of stock price web updates for specific information, such as the price of stock X falling below \$50 per share. If the data filter 16 identifies such data," (col. 4, ll. 21-24) "the [computer's] screen might simply display the web page update . . . ." (*Id.* ll. 31-32.)

An "event indicator monitor 20 monitors [an] event indicator 18 to determine whether the user deactivates the indicator 18 within [a] predetermined time interval." (*Id.* ll. 40-42.) "If the indicator 18 is not deactivated within the predetermined time interval, the monitor 20 accesses an event notification text message from the local memory 15 and causes the text message to be transmitted to the control program 30 . . . ." (*Id.* ll. 46-50.) "The control program 30 utilizes the text-to-speech converter 34 to convert the text message to a speech format suitable for transmission to the analog telephone 46 or the cellular phone 44, if the event notification protocol indicates that the event notification message must be transmitted to these devices." (Col. 5, ll. 28-32.)

Because the speech message is a translation of the text message, and the text message corresponds to the content of the displayed stock price web update, we agree with the Examiner's finding that the speech message corresponds to text of the displayed stock price web update. The Appellants

have shown no error in the Examiner's finding that Shaffer discloses a voice signal corresponding to displayed text. Therefore, we affirm the rejection of claim 11.

#### V. CLAIMS 12 AND 13

The issue is whether the Appellants have shown error in the Examiner's reason for combining teachings of Shaffer and Conley. Just as "[i]t is not the function of [the U.S. Court of Appeals for the Federal Circuit] to examine the claims in greater detail than argued by an appellant, looking for nonobvious distinctions over the prior art" *In re Baxter Travenol Labs.*, 952 F.2d 388, 391 (Fed. Cir. 1991), "it is not the function of this Board to examine claims in greater detail than argued by an appellant, looking for nonobvious distinctions over the prior art." *Ex parte Post*, No. 2005-2042, 2006 WL 1665399 at \*4 (BPAI 2006). Furthermore, a "reply by the applicant or patent owner [to a rejection] must . . . distinctly and specifically points out the supposed errors in the examiner's action . . . . The reply must present arguments pointing out the specific distinctions believed to render the claims . . . patentable over any applied references." 37 C.F.R. § 1.111(b).

Here, the Examiner specifically explains why it would have been obvious at the time of the invention to a person of ordinary skill in the art to have combined teachings of Shaffer and Conley to arrive at the claimed subject matter. To wit, he offers the following finding and conclusion.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified Shaffer et al.

by the teaching of Conley, Jr. et al. to include extracting attribute information from an existing text file; acquiring said associated information related to said important word selected in the selecting step; constructing a database by use of at least one of said attribute information extracted in the extraction step and said associated information acquired in the acquiring step because it provides seamless and easy system of gathering marketing information based on the end user's browser's use.

(Ans. 10-11.) The Appellants respond that "the NA errs in failing to set forth any reasonable basis to even select Connley, [sic] Jr. for combination with Shaffer, much less a reasonable basis to attempt to combine the clearly disparate teachings of these references." (2d Supp. App. Br. 13.)

Without specifically addressing the Examiner's finding or conclusion, the Appellants' response amounts to a general allegation that the claims define a patentable invention. It shows no error in the Examiner's reason for combining teachings of Shaffer and Conley. Therefore, we affirm the rejection of claims 12 and 13.

## VI. CLAIMS 7 AND 8

The Appellants argue claims 7 and 8, which are subject to the same ground of rejection, as a group. (2d Supp. App. Br. 12-13). We select claim 7 as the sole claim on which to decide the appeal of claims 7 and 8. "With this representation in mind, rather than reiterate the positions of the parties *in toto*, we focus on the issues therebetween." *Ex Parte Zettel*, No. 2007-1361, 2007 WL 3114962, at \*2 (BPAI 2007).



A. NEW ARGUMENT IN REPLY BRIEF

"[I]t is inappropriate for appellants to discuss in their reply brief matters not raised in . . . the principal brief[ ]. Reply briefs are to be used to reply to matter[s] raised in the brief of the appellee." *Kaufman Company, Inc. v. Lantech, Inc.*, 807 F.2d 970, 973 n. (Fed. Cir. 1986). "Considering an argument advanced for the first time in a reply brief . . . is not only unfair to an appellee . . . but also entails the risk of an improvident or ill-advised opinion on the legal issues tendered." *McBride v. Merrell Dow and Pharms., Inc.*, 800 F.2d 1208, 1211 (D.C. Cir. 1986) (internal citations omitted).

There are cogent reasons for not permitting an appellant to raise issues or arguments in a reply brief. Among them are the unfairness to the appellee who does not have an opportunity to respond and the added burden on the court that a contrary practice would entail. As the Tenth Circuit put it, permitting an appellant to raise new arguments in a reply brief "would be unfair to the court itself, which without the benefit of a response from appellee to an appellant's late-blooming argument, would run the risk 'of an improvident or ill-advised opinion, given [the court's] dependence . . . on the adversarial process for sharpening the issues for decision.'" *Headrick [v. Rockwell Int'l Corp.]*, 24 F.3d [1272,] 1278 [(10th Cir. 1994)], (quoting *Herbert v. Nat'l Academy of Sciences*, 974 F.2d 192, 196 (D.C. Cir. 1992)).

*Carbino v. West*, 168 F.3d 32, 34-35 (Fed. Cir. 1999).

Here, the Appellants' Reply Brief includes the following new argument: "nothing in the suggestion of somehow analyzing an e-mail message or a calendar reminder from 13 teaches 'selecting an important word from among words contained in said existing text file' (emphasis

added)." (Reply Br. 7.) Because the treatment of the limitation in the Examiner's Answer (p. 9) is identical to that in the Non-Final Rejection (p. 9) from which the instant appeal was taken, we find nothing that would have prompted the argument. The Appellants could have made the argument in the Second Supplemental Appeal Brief.

The term "reply brief" is exactly that, a brief in reply to new rejections or new arguments set forth in an examiner's answer. The Appellants may not present their arguments in a piecemeal fashion, holding back arguments until an examiner answers their original brief. Of course, the Appellants may present new arguments directly to the Examiner for consideration as part of a continuing application.

*Ex parte Howard*, No. 2007-3624, 2008 WL 1997939 (BPAI 2008).

Therefore, we will not consider the new argument.

#### B. DETECTING A KEYWORD FROM A TEXT FILE

The Examiner finds that Shaffer discloses "detecting a keyword from said text file corresponding to said event detected in the event occurrence detecting step (See . . . column 3, lines 48-64) . . . ." (Ans. 9.) The Appellants make the following argument.

"[D]etecting a keyword from said text file corresponding to said event detected in the event occurrence detecting step" has nothing to do with anything reasonably taught at col. 3, lines 48-64 of Shaffer that only teach generating a text message as a notification, not as a text file for any key word selection.

(2d Supp. App. Br. 13.) Therefore, the issue is whether the Appellants have shown error in the Examiner's finding that Shaffer discloses detecting a

keyword from a text file wherein the keyword corresponds to a detected event.

"[T]he PTO gives claims their 'broadest reasonable interpretation.'" *In re Bigio*, 381 F.3d 1320, 1324 (Fed. Cir. 2004) (quoting *In re Hyatt*, 211 F.3d 1367, 1372 (Fed. Cir. 2000)). "Moreover, limitations are not to be read into the claims from the specification." *In re Van Geuns*, 988 F.2d 1181, 1184 (Fed. Cir. 1993) (citing *In re Zletz*, 893 F.2d 319, 321 (Fed. Cir. 1989)).

Here, claim 7 recites in pertinent part the following limitations: "detecting a keyword from said text file corresponding to said event detected in the event occurrence detecting step . . . ." Contrary to the Appellants' argument, the limitations do not include "any key word selection." (2d Supp. App. Br. 13.) Giving the representative claim the broadest, reasonable construction, the limitations merely require detecting a keyword from a text file wherein the keyword corresponds to a detected event.

As mentioned regarding claims 9, 11, and 14-16, Shaffer detects events occurring in web page updates, e-mail messages, or electronic calendar messages, any of which constitutes a text file. More specifically, the reference explains that its "data filter may execute keyword searches for descriptors in the contents of received messages. An event indicator 18 connected to the data filter 16 is responsive to detection of the event by the data filter 16." (Col. 3, ll. 51-55.) Because Shaffer executes keyword searches of web page updates, e-mail messages, or electronic calendar

messages, and detection thereof constitutes and event, the Appellants have shown no error in the Examiner's finding that Shaffer discloses detecting a keyword from a text file wherein the keyword corresponds to a detected event. Therefore, we affirm the rejection of claim 7 and of claim 8, which falls therewith.

## VII. ORDER

In summary, a new rejection is entered against claims 1-6 and 17-20, and the Examiner's rejections thereof are reversed. His rejections of claims 7-16, however, are affirmed.

"Any arguments or authorities not included in the brief or a reply brief filed pursuant to [37 C.F.R.] § 41.41 will be refused consideration by the Board, unless good cause is shown." 37 C.F.R. § 41.37(c)(1)(vii). Accordingly, our affirmance is based only on the arguments made in the Second Supplemental Appeal Brief and the Reply Brief. Any arguments or authorities omitted therefrom are neither before us nor at issue but are considered waived. *Cf. In re Watts*, 354 F.3d 1362, 1367 (Fed. Cir. 2004) ("[I]t is important that the applicant challenging a decision not be permitted to raise arguments on appeal that were not presented to the Board.")

37 C.F.R. § 41.50(b) provides that "[a] new grounds of rejection pursuant to this paragraph shall not be considered final for judicial review." Section 41.50(b) also provides that, within two months from the date of the

decision, the appellant must exercise one of the following options to avoid termination of proceedings of the rejected claims:

(1) Submit an appropriate amendment of the claims so rejected or new evidence relating to the claims so rejected, or both, and have the matter reconsidered by the examiner, in which event the proceeding will be remanded to the examiner. . . .

(2) Request that the proceeding be reheard under 37 C.F.R. § 41.52 by the Board upon the same record. . . .

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED-IN-PART

37 C.F.R. § 41.50(b)

rwk

OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.  
1940 DUKE STREET  
ALEXANDRIA, VA 22314